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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/666,831

09/12/2003

Wade Littleton

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

04/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

ED

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/666,831	Applicant(s) LITTLETON ET AL.	
	Examiner Melanie J. Hand	Art Unit 3761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 4/2/07 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed April 2, 2007 have been fully considered but they are not persuasive. With respect to applicant's arguments regarding claims 1 and 10: Applicant argues that the prior art of McIntyre teaches that the instant pouch contains a moisture absorbent powder in a nonwoven web so as to minimize escape of said powder and thus does not render claims 1 and 10 unpatentable. Applicant has correctly noted the concession by Examiner that McIntyre does not teach a woven fabric. However, as to the remaining limitations in claims 1 and 10, Examiner maintains that McIntyre teaches said limitation. In response to applicant's argument that McIntyre desires that a minimum amount of powder escape the pouch and that the powder and pouch are intended for use as a moisture absorbent means, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Applicant further argues that Examiner's conclusion that a substitution of a woven fabric for a porous tissue or nonwoven web is arbitrary. In keeping with applicant's citation of MPEP §§ 2141-2143.03, what follows is a clearer explanation of the prima facie case of obviousness that Examiner correctly and fully made in the final action mailed January 19, 2007 according to MPEP §2143. Examiner's response to each follows each cited criterion.

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings."

McIntyre suggests a substitution of a woven fabric by teaching a porous tissue. Both materials are porous. It is noted for the purpose of clarification that the rejection reads that a porous tissue or other nonwoven web can be substituted with a woven fabric. Applicant focused exclusively on the concept of replacing a nonwoven web with a woven web. In keeping with this focus, in the art of absorbent articles containing deodorant substances, the knowledge that a nonwoven or woven is acceptable for outer layers of such an absorbent article is knowledge generally available to one of ordinary skill in the art. The list of publications that affirm this statement is exhaustive. A porous tissue certainly lends a suggestion to modify the article by replacing said tissue with another porous material, i.e. a woven fabric.

"Second, there must be a reasonable expectation of success." In light of the response to the first criteria of making a prima facie case of obviousness stated supra, it follows that there is in fact a reasonable expectation of success when replacing either a porous tissue with a woven fabric, or another nonwoven web with a woven fabric, as such a substitution is known and accepted in the art.

"Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." The device of McIntyre teaches or suggests all of the claim limitations. Examiner maintains all rejections made in the final Office action mailed 1/19/07.